(2024) 10 BOM CK 0018

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 7735 Of 2024

Dhule Municipal Commissioner Dhule Municipal Corporation		APPELLANT
	Vs	
Ms Borse Brother Engineers And Contractors Pvt Ltd Through Its Director		RESPONDENT

Date of Decision: Oct. 15, 2024

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 227
- Arbitration and Conciliation Act, 1996 - Section 11(6), 12(3), 20, 20(1), 20(2), 20(3)

Hon'ble Judges: Arun R. Pedneker, J

Bench: Single Bench

Advocate: S. B.Yawalkar, N. N. Desale, Amol K. Gawali

Final Decision: Dismissed

Judgement

Arun R. Pedneker, J.

1. Rule. Rule made returnable forthwith with consent heard finally.

2. By the present petition, the petitioner challenges the interim order dated 16/06/2024 passed in Arbitration Proceeding No.12/2024 by the sole Arbitrator fixing the venue of arbitration at Aurangabad.

3. It is contention of the learned Counsel Mr. S. B.Yawalkar holding for Mr. N. N. Desale for petitioner that the venue cannot be fixed anywhere other than as provided in the agreement. The agreed venue between the parties in terms of Clause 19.3 (b) of the agreement dated 02/09/2013 entered between the parties, is at ‘Regional headquarter Commissioner D.M.C., Dhule’, and not at Aurangabad.

4. It is the contention of the learned Counsel for the petitioner that the order dated 19/07/2021 in Arbitration Application No.07/2021 of the High Court appointing the arbitrator and subsequent orders dated 15/12/2022 substituting the arbitrator in Arbitration Application No.24/2022, and order dated 21/03/2024 in Arbitration Application No.01/2024 has also mandated that the place of arbitration shall be as per Clause 19.3 (b) of the agreement dated 02/09/2013, and that the parties have agreed that the place of arbitration as agreed under Section 20 (1) of the Arbitration and Conciliation Act, 1996, is the seat and also the venue for all purposes of the arbitration proceedings.

5. The next submission of the learned Counsel for the petitioner is that the arbitrator has no jurisdiction to change the venue once the agreement provides for the same unless a different venue is subsequently agreed between the parties. It is submitted that Section 20 (1) of the Arbitration and Conciliation Act, 1996 deals with the place of arbitration. Sub-section (2) of Section 20 gives power to the arbitral tribunal to determine the place of arbitration in absence of any agreement as contemplated under Section 20 sub-clause (1) of the Act. As per Section 20 (3) of the Act, the Tribunal can meet at any place if it considers appropriate for hearing witnesses, experts or parties etc. It is further submitted that the impugned order is in violation of Section 20 of the Arbitration and Conciliation Act, 1996.

6. It is the contention of the learned Counsel for the petitioner that the arbitration proceedings are to be conducted at the place of arbitration as agreed by the parties. In the present matter the arbitration proceedings commenced at “Regional Headquarter Commissioner, D.M.C., Dhule” and as per order dated 19/07/2021 of this Court, appropriate arrangements are also made for conducting arbitration proceedings at the said place. The pleadings in the arbitration proceedings were completed at the place of arbitration and even the evidence commenced at the place of arbitration. The cross-examination is under progress at the arbitration place i.e. “Regional Headquarter Commissioner D.M.C., Dhule.”

7. Since agreement is entered between the parties was at Dhule, the work in terms of contract was executed at Dhule as per agreement so also witnesses, experts and the site of work (if required for inspection) is at Dhule and the agreement also states that the place of arbitration is at Regional headquarter Commissioner, D.M.C., Dhule. As such, in this background the seat and venue is one and the same and the arbitration proceedings are required to be conducted at a place of arbitration i.e. “Regional Headquarter Commissioner D.M.C., Dhule.”

8. As regards maintainability of the writ petition to challenge the interim order of the sole Arbitrator the learned Counsel for the petitioner has submitted that the High Court in exercise of its power under Article 226 and 227 of the Constitution of India can

intervene in the arbitration proceedings in exceptional circumstances. He relied upon the following Judgments : -

1) BBR (India) Private Limited vs. S. P. Singla Constructions Private Limited, reported in AIR 2022 Supreme Court 2673,

2) Inox Renewables Limited vs. Jayesh Electricals Limited, reported in (2023) 3 Supreme Court Cases 733,

3) Jagson Airlines Ltd. and Anr. vs. Bannari Amman Exports (P) Ltd., reported in 2003 (69) DRJ 490,

4) U.P.Ban Nigam, Almora and another vs. Bishan Nath Goswami, (Deceased by L.Rs.), reported in AIR 1985 Allahabad 351,

5) Surendra Kumar Singhal and Others vs. Arun Kumar Bhalotia and Others, reported in (2021) 279 DLT 636,

6) Hindustan Petroleum Corporation Limited, Through its Authorized Representative Gagandeep Singh Sodhi vs. Om Construction, Through its Sole Proprietor Satya Pal Yadav and Others, reported in 2023 SCC OnLine Bom 2219.

9. Per contra, the learned Counsel Mr. Amol K. Gawali, appearing for the respondent, on the legal aspect, submits that Clause 20(1) of the Arbitration and Conciliation Act, 1996, deals with the seat of arbitration, while sub-clause (3) of Section 20 addresses the venue of arbitration. He submits that, in terms of Clause 19.3 (b) of the agreement, the place of arbitration, as provided in the agreement, refers to the seat of arbitration. As regards the venue, it is ordinarily the same place, but the Arbitrator has the discretion to choose a different venue, taking into consideration the submissions of the parties and other relevant documents.

10. The learned Counsel for the respondent submits that the Arbitrator has interpreted the Clause 19 (B) of the agreement dated 02/09/2013 to mean that it relates to the seat of arbitration and not the venue of arbitration. As there is no agreement regarding the venue, the sole Arbitrator has decided on Aurangabad as the venue of arbitration, considering the submissions of the parties and the fact that the earlier Arbitrators had difficulties for conducting proceedings at Dhule. The learned Counsel for the respondent further submits that the Arbitrator has considered that there is no dispute regarding the seat of arbitration, but there is no consensus on the venue. He argues that, in this factual situation, the Court should refrain from exercising its powers under Article 226 and 227 of the Constitution of India, as these powers should only be exercised sparingly in cases of grave illegality affecting the core of the matter. He further submits that the change of venue does not alter the seat of arbitration, which has been noted by the Arbitrator. Therefore, no substantial prejudice has been caused

to the arbitration proceedings, nor any prejudice is caused to the petitioners. The petitioners can attend the arbitration with their records at Aurangabad. The learned Counsel for the respondent also submits that the parties had previously agreed before the earlier Arbitrator that they would appear at any location chosen by the Arbitrator, based on the convenience of the parties.

11. The learned Counsel for the respondent also submits that when the first Arbitrator was appointed, the venue of arbitration, with the consent of the parties, was shifted to Nashik. The Arbitrator conducted the proceedings at Nashik, and the parties appeared before him on at least nine occasions, during which the proceedings were conducted and all pleadings were completed.

12. The learned Counsel for the respondent relied upon the following judgments to support his submissions : -

1) BGS SGS Soma JV vs. NHPC Limited, reported in (2020) 4 Supreme Court Cases 234, And

2) Bhaven Constuction Through Authorised Signatory Premjibhai K. Shah vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Another, reported in (2022) 1 Supreme Court Cases 75.

13. Considering the rival contentions, it is necessary to note the relevant clause in the agreement and relevant provision of the Act. Section 20 of the Arbitration and Conciliation Act, 1996, reads as under :-

“20. Place of arbitration.

(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section(1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.”

14. Clause 19.3 (b) of the agreement dated 02/09/2013 is noted below : -

“19.3 (b) Place of Arbitration

The place of arbitration shall be Regional Headquarter Commissioner, D.M.C. but by agreement of the Parties, the arbitration hearing, if required, can be held elsewhere from time to time.”

15. Perusal of the impugned order indicates that the objection has been raised on behalf of the Dhule Municipal Corporation regarding the venue of arbitration being at Aurangabad. The corporation in the objection application contend that the arbitration clause provides for the venue of arbitration to be at the Regional Headquarter of the Municipal Corporation, Dhule, and that appropriate arrangements have been made in that regard. It is also stated in the application that the High Court passed an order appointing the Arbitrator, and it was held that the venue of the meetings would be in accordance with the arbitration clause. Thus, the issue regarding the venue of the meetings is considered to be concluded.

16. Upon considering Section 20 of the Arbitration and Conciliation Act, along with Clause 19.3 (b) of the agreement, the Arbitrator has observed that, in the present matter, there is no agreement between the parties concerning the venue of the meetings. The arbitrator has also noted the difficulties faced by the earlier Arbitrators in conducting the proceedings at the office of the petitioner in Dhule. Consequently, the Arbitrator has rejected the petitioner's application.

17. The first issue before this Court is whether the arbitration proceedings can be conducted at Aurangabad in the instant case. It is undisputed that certain proceedings have already taken place by the earlier two Arbitrators appointed by the orders of this Court. The first Arbitrator, Mr. R.W. Nikam (Retired Chief Engineer), conducted the proceedings at Nashik, which is 160 kilometers away from Dhule. Subsequently, Mr. Nikam refused to continue with the matter. Thereafter, Hon'ble Justice Mr. Sangitrao S. Patil, Former Judge of the High Court, was appointed as the Arbitrator, but he too refused to conduct the proceedings due to the non-cooperation of the petitioner. A letter was written by the Commissioner of the Municipal Corporation, Dhule, to the Arbitrator. Upon receipt of the letter from the Commissioner, the learned Arbitrator informed the High Court as follows: -

"There is discussion amongst the Councilor as well as the citizens that the undersigned is the relative of the claimant/Borse Brothers, and therefore, it is apprehended that the opponent would not get justice at the hands of undersigned. It is further stated that the Councilor as well as the citizens have taken objection to the further proceedings at the hands of undersigned and a resolution has been passed accordingly."

In the instant case, the petitioner has not cooperated with the earlier Arbitrators. The Arbitrator, taking into account the earlier experience of by the Arbitrators and the fact that the agreement does not provide for venue of arbitration, has decided not to hold the proceedings in Dhule but instead at Aurangabad, which is approximately 155 kilometers from Dhule.

18. In **BBR (India) Private Limited** (Supra), the Hon'ble Supreme Court, examined the scope of Section 20 of the Arbitration and Conciliation Act, 1996, and at paragraph No.16, has observed as under :-

"16. Turning to Section 20 of the Act, sub-section (1) in clear terms states that the parties can agree on the place of arbitration. The word 'free' has been used to emphasis the autonomy and flexibility that the parties enjoy to agree on a place of arbitration which is unrestricted and need not be confined to the place where the 'subject matter of the suit' is situated. Sub-section (1) to Section 20 gives primacy to the agreement of the parties by which they are entitled to fix and specify 'the seat of arbitration', which then, by operation of law, determines the jurisdictional court that will, in the said case, exercise territorial jurisdiction. Sub-section (2) comes into the picture only when the parties have not agreed on the place of arbitration as 'the seat'. In terms of sub-section (2) of Section 20 the arbitral tribunal determines the place of arbitration. The arbitral tribunal, while doing so, can take into regard the circumstances of the case, including the convenience of the parties. Sub-section (3) of Section 20 of the Act enables the arbitral tribunal, unless the parties have agreed to the contrary, to meet at any place to conduct hearing at a place of convenience in matters, such as consultation among its members, for the recording of witnesses, experts or hearing parties, inspection of documents, goods, or property."

The Hon'ble Supreme Court, in **B B R (India) Private Limited** (Supra), held that under sub-section (3) of Section 20 of the Arbitration and Conciliation Act, 1996, the arbitral tribunal is empowered, unless the parties have agreed otherwise, to conduct hearings at any place of convenience. This can be for purposes such as consultation among its members, recording of witness statements, examination of experts or parties, and inspection of documents, goods, or property.

The Court further observed that the 'seat of arbitration' need not necessarily be the place where the cause of action has arisen. The 'seat of arbitration' may be different from the place where contractual obligations are or were to be performed. In such cases, both courts would have jurisdiction—namely, the courts within whose jurisdiction the subject matter of the suit is located and the courts within whose jurisdiction the arbitral tribunal is situated.

At paragraph 21 of **BBR (India) Private Limited** (Supra), it is also observed that, as per the judgment in **BGS SGS Soma (Supra),** the 'seat of arbitration' can be determined by applying the following simple test :-

"61. It will thus be seen that wherever there is an express designation of a "venue", and no designation of any alternative place as the "seat", combined with a supranational body of rules governing the arbitration, and no other significant

contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding."

19. In the case of **Inox Renewables Limited (Supra)**, the Hon'ble Supreme Court held that once the "seat" of arbitration is designated by agreement between the parties, it functions like an exclusive jurisdiction clause. This means that the courts at the designated "seat" of arbitration would have exclusive jurisdiction for regulating the arbitral proceedings arising from the agreement between the parties.

20. In case of **BGS SGS Soma JV (Supra)**, the Hon'ble Supreme Court has observed that, a plain reading of Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any "place" or "seat" within India, be it Delhi, Mumbai etc. In the absence of the parties' agreement thereto, Section 20(2) authorizes the tribunal to determine the place/seat of such arbitration. Section 20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties.

The Supreme Court has also observed that, The fixation of the most convenient "venue" is taken care of by Section 20(3).

The Supreme Court in the case of BGS SGS Soma JV (Supra) has held that in certain cases the venue mentioned in the arbitration agreement may really be the seat of arbitration and at paragraph No.97 has observed as under :-

"The arbitration clause in the present case states that "Arbitration Proceedings shall be held at New Delhi/Faridabad, India…", thereby signifying that all the hearings, including the making of the award, are to take place at one of the stated places. Negatively speaking, the clause does not state that the venue is so that some, or all, of the hearings take place at the venue; neither does it use language such as "the Tribunal may meet", or "may hear witnesses, experts or parties". The expression "shall be held" also indicates that the so-called "venue" is really the "seat" of the arbitral proceedings."

21. In the case of **Jagson Airlines Ltd. (Supra),** the Delhi High Court, dealt with venue of arbitration proceedings and at paragraph No.31, has observed as follows: -

"31. The Arbitrator is a creature of the agreement or contract and is not over and above it. He has to remain within the precincts of the agreement. Once parties agree in writing as to the venue of arbitration, the same cannot be changed by the Arbitrator until and unless the parties subsequently change the venue. In Associated Engineering Co Vs. Government of A.P., the Supreme Court commented upon the functions of the Arbitrator like this :-

"The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction."

22. In case of **U. P. Ban Nigam, Almora (Supra),** the Allahabad High Court, while dealing with venue of arbitration at paragraph 13, has observed as follows : -

“13. It was not open to the arbitrator to fix the venue of his choice regardless of the convenience of parties etc. Under Section 13 of Arbitration Act, which contemplates the powers and duties of arbitrator, he cannot violate the principles of natural justice and has to give fair hearing to the parties. In the instant case, both the parties resided at Almora and the cause of action also arose at Almora. Local inspection or adduction of evidence at Almora would have been conducive to the convenience of parties and justice in the matter. There was no condition in the arbitration agreement to empower the arbitrator to fix the venue of arbitration as he thought fit. It must be in consonance with the principles of natural justice also.”

23. The Delhi High Court, in the case of Surender Kumar Singhal (Supra), addressed the exercise of jurisdiction under Articles 226 and 227 of the Constitution of India concerning arbitral orders. In paragraph No. 25, the Court observed as under : -

“25. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act.

(i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;

(ii) The non-obstante clause in section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;

(iii) For interference under Article 226/227, there have to be `exceptional circumstances';

(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;

(v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;

(vii) Excessive judicial interference in the arbitral process is not encouraged;

(viii) It is prudent not to exercise jurisdiction under Article 226/227;

(ix) The power should be exercised in `exceptional rarity' or if there is `bad faith' which is shown;

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."

24. In the case of **Bhaven Construction (Supra),** the Hon'ble Supreme Court, at paragraph No. 18, observed as under : -

"18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In Nivedita Sharma v. Cellular Operators Association of India, (2011) 14 SCC 337, this Court referred to several judgments and held :

"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation – L. Chandra Kumar v. Union of India, (1997) 3 SCC 261. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/ instrumentality or any public authority or order passed by a quasi- judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear 'bad faith' shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient."

25. The judgments of the Hon'ble Supreme Court in BBR (India) Private Limited (supra), BGS SGS Soma JV (Supra), Inox Renewables Limited (supra), it is held that Section 20(1) relates to the seat of arbitration and not the venue. Section 20(3) of the Act pertains to the venue of arbitration. In the case of **Jagson Airlines Ltd. (supra),** of Hon'ble Delhi Court dealt with venue of arbitration and held that when there is express agreement on venue of arbitration the arbitrator cannot change it without consent of parties and in case of **U.P. Ban Nigam (supra),** the Allahabad High Court has held that when there is no agreement on venue between the parties, the same has to be by considering convenience of both the parties.

26. Section 20(3) provides that if the venue is agreed upon by the parties, the arbitrator does not have the authority to change it without the consent of the parties. The phrase "unless otherwise agreed by the parties" in sub-clause (3) of Section 20 explicitly states this. However, the issue that arises for consideration is whether the arbitrator in a fact situation can conclude that it is not feasible for the parties to conduct the arbitration at the agreed venue and change the venue without the consent of all the parties.

27. The Hon'ble Supreme Court in instances of Arbitration agreement which provides for unilateral appointment of arbitrators by one of the party to the agreement, the Supreme Court has ruled that the High Court in exercise of powers under Section 11(6) of the Arbitration and Conciliation Act, can appoint an arbitrator. Please See : - **TRF Ltd. Vs. Energo Engineering Projects Ltd. reported in (2017) 8 SCC 377,** and **Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd. reported in (2020) 20 SCC 760.** The Supreme Court in above cases of TRF (Supra) and Perkins (Supra) has held that neutrality of Arbitrators is sacrosanct. Thus, there are certain factual situations where, notwithstanding a prior contract to the contrary, this court has exercised its power under Section 11(6) of the Act, to appoint arbitrators.

28. Similarly, in the instant case, even assuming that the venue is stipulated in the agreement, and the neutrality of venue comes in sharp focus on account of dominant position of one of the party at a particular venue i.e. if the arbitrator concludes that conducting the arbitration proceedings at the specified venue is detrimental to the arbitration process, he may shift the venue to an alternate conveniently located place. This exercise should be permitted as the arbitrator discharges quasi-judicial functions. If the arbitrator determines that conducting arbitration proceedings at a particular venue is detrimental to the arbitration process like one party is in a dominant position at a particular venue and brings undue pressure on the other party and the Arbitrator, he may change the venue considering the convenience of parties. However, where the exclusive seat of arbitration is mentioned in the agreement, the arbitrator have no choice but to maintain that seat. In my considered view Section 20 (3) of the Act does not completely bar change of venue without the consent of parties when the venue is agreed in the agreement, if in the facts situation the Arbitrator reaches a conclusion

that conducting the arbitration proceedings at an agreed venue is detrimental to the arbitration process.

29. The Hon'ble Supreme Court in the case of Lombard Engineering Limited Vs. Uttarakhand Jal Vidyut Nigam Limited, dated 06.11.2023, Arbitration Petition No.43 of 2022, considered whether clause 55 of the GCC containing condition of 7% deposit of the total amount of claim and second relating to the stipulation empowering the Principal Secretary (Irrigation) Government of Uttarakhand to appoint a sole arbitrator was considered and was striked out and the Hon'ble Supreme court held that the appointment of arbitrator notwithstanding the contract to the contrary would be void and that the one of the parties did not have a bargaining power to modify the contract. The arbitration agreement has to be in conformity with the Contract Act and should satisfy core contractual requirements.

Thus in the case of **Lombard Engineering** (Supra), the Supreme Court has permitted deviation from the agreement where one of the parties did not have a bargaining power to modify the contract.

30. In the case of **Lombard Engineering Limited** (Supra) the 3 Judges bench of the Hon'ble Supreme Court has at paras 84, 89 and 102 has observed as under:-

"84. The concept of "party autonomy" as pressed into service by the respondent cannot be stretched to an extent where it violates the fundamental rights under the Constitution. For an arbitration clause to be legally binding it has to be in consonance with the "operation of law" which includes the Grundnorm i.e. the Constitution. It is the rule of law which is supreme and forms parts of the basic structure. The argument canvassed on behalf of the respondent that the petitioner having consented to the pre-deposit clause at the time of execution of the agreement, cannot turn around and tell the court in a Section 11(6) petition that the same is arbitrary and falling foul of Article 14 of the Constitution is without any merit."

"89. The Amendment 2015 is also based on the recommendation of the Law Commission which specifically dealt with the issue of "Neutrality of Arbitrators" and a discussion in this behalf is contained in paras 53 to 60 of the Law Commission's Report No. 246 published in the August 2004. We reproduce the entire discussion hereinbelow:

"NEUTRALITY OF ARBITRATORS

53. It is universally accepted that any quasi-judicial process, including the arbitration process, must be in accordance with principles of natural justice. In the context of arbitration, neutrality of arbitrators viz. Their independence and impartiality, is critical to the entire process.

54. In the Act, the test for neutrality is set out in Section 12(3) which provides—

‘12. (3) An arbitrator may be challenged only if—

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality….’

57. The balance between procedural fairness and binding nature of these contracts, appears to have been tilted in favour of the latter by the Supreme Court, and the Commission believes the present position of law is far from satisfactory. Since the principles of impartiality and independence cannot be discarded at any stage of the proceedings, specifically at the stage of constitution of the Arbitral Tribunal, it would be incongruous to say that party autonomy can be exercised in complete disregard of these principles — even if the same has been agreed prior to the disputes having arisen between the parties. There are certain minimum levels of independence and impartiality that should be required of the arbitral process regardless of the parties' apparent agreement. A sensible law cannot, for instance, permit appointment of an arbitrator who is himself a party to the dispute, or who is employed by (or similarly dependent on) one party, even if this is what the parties agreed. The Commission hastens to add that Mr P.K. Malhotra, the ex officio member of the Law Commission suggested having an exception for the State, and allow State parties to appoint employee arbitrators. The Commission is of the opinion that, on this issue, there cannot be any distinction between State and non-State parties. The concept of party autonomy cannot be stretched to a point where it negates the very basis of having impartial and independent adjudicators for resolution of disputes. In fact, when the party appointing an adjudicator is the State, the duty to appoint an impartial and independent adjudicator is that much more onerous — and the right to natural justice cannot be said to have been waived only on the basis of a “prior” agreement between the parties at the time of the contract and before arising of the disputes.”

93. There was clearly inequality of bargaining power between Uber and Mr. Heller. The arbitration agreement was part of a standard form contract. Mr. Heller was powerless to negotiate any of its terms. His only contractual option was to accept or reject it…”

“102. In view of the aforesaid discussion, we have reached to the conclusion that we should ignore the two conditions contained in Clause 55 of the GCC, one relating to 7% deposit of the total amount claimed and the second one relating to the stipulation empowering the Principle Secretary (Irrigation) Government of Uttarakhand to appoint a sole arbitrator and proceed to appoint an independent arbitrator.”

31. In the instant case, the sole Arbitrator has taken following facts into consideration while fixing venue of Arbitration : -

(1) There is no agreement on the venue; although there is an agreement on the seat, the venue can be shifted to a more convenient location without changing the seat of arbitration.

(2) The arbitrator noted that the earlier arbitrators faced difficulties while conducting proceedings at the stated seat, specifically the office of the Municipal Corporation in Dhule.

(3) The arbitral proceedings were conducted at least on nine occasions far from the stated venue, in Nashik, which is 160 kilometers away.

32. Whether the agreement did provide for consensus on the venue or whether there were sufficient grounds to alter the venue are issues left open for decision by the court at appropriate stage. This court would not interfere in such matters in the exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India.

33. Rule is discharged. The writ petition is accordingly dismissed.